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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 HORACE G. FRIEND,

11 Plaintiff,

12 v.

13 U.S. ATTORNEY GENERAL,

14 Defendant.

CASE NO. C21-5566JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court are (1) *pro se* Plaintiff Horace G. Friend's complaint against
17 Defendant the United States Attorney General ("the Attorney General") (Compl. (Dkt.
18 # 6); and (2) Magistrate Judge S. Kate Vaughan's order granting Mr. Friend *in forma*
19 *pauperis* ("IFP") status and recommending that the court review this action pursuant to
20 28 U.S.C. § 1915(e)(2)(B) (IFP Order (Dkt. # 5)). Under 28 U.S.C. § 1915(e), courts
21 have authority to review IFP complaints and must dismiss them if "at any time" it is
22 determined that a complaint is frivolous, malicious, fails to state a claim on which relief

1 may be granted, or seeks monetary relief from a defendant who is immune from such
2 relief. As discussed below, Mr. Friend’s complaint falls within the category of pleadings
3 that the court must dismiss.

4 **II. BACKGROUND**

5 On July 24, 2021, Mr. Friend filed a declaration and application to proceed IFP
6 and a proposed complaint, which were received by the Clerk’s office on August 4, 2021.
7 (IFP App. (Dkt. # 1); Prop. Compl. (Dkt. # 1-1).) Mr. Friend filed a corrected IFP
8 application on August 16, 2021 (Corrected IFP App. (Dkt. # 4), which Magistrate Judge
9 Vaughan granted on August 31, 2021 (IFP Order). Mr. Friend’s proposed complaint was
10 subsequently filed on the docket. (Compl.)

11 Mr. Friend’s complaint alleges that the Attorney General has violated his
12 constitutional rights. (*Id.* at 1-2.) The complaint further alleges that these violations arise
13 because, over the course of multiple decades, his “application for the return of his stolen
14 certificate of citizenship” has been ignored, and his applications for “a U.S. Passport” and
15 replacement Social Security card have been denied. (*Id.*) Mr. Friend names only the
16 Attorney General as a defendant. (*Id.* at 1.)

17 As relief, Mr. Friend asks the court to “correct[]” “the wrong perpetrated against
18 him.” (*Id.* at 2.)

19 **III. ANALYSIS**

20 Title 28 U.S.C. § 1915(e)(2)(B) authorizes a district court to dismiss a claim filed
21 IFP “at any time” if it determines: (1) the action is frivolous or malicious; (2) the action
22 fails to state a claim; or (3) the action seeks relief from a defendant who is immune from

1 such relief. *See* 28 U.S.C. § 1915(e)(2)(B). Section 1915(e)(2) parallels the language of
2 Federal Rule of Civil Procedure 12(b)(6). *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th
3 Cir. 2000). The complaint therefore must allege facts that plausibly establish the
4 defendant's liability. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007).
5 Because Mr. Friend is a *pro se* plaintiff, the court must construe his pleadings liberally.
6 *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

7 At bottom, Mr. Friend appears to allege that he has suffered a deprivation of
8 constitutional rights because he has been denied access to various government
9 documents, including a "certificate of citizenship," a passport, and a Social Security card.
10 (Compl. at 1.) Even liberally construed, however, Mr. Friend's factual allegations are
11 wholly inadequate to plausibly establish the Attorney General's liability or raise his
12 "right to relief above the speculative level." *See Twombly*, 550 U.S. at 555. The court
13 thus concludes that Mr. Friend's complaint fails to state a claim.

14 To begin, Mr. Friend relies on 42 U.S.C. § 1983 as the basis for his lawsuit against
15 the Attorney General. (*See* Compl.; Civ. Cover Sheet (Dkt. # 1-2)). That statute,
16 however, pertains to violations of federal rights committed by state officials, *see* 42
17 U.S.C. § 1983, and "provides no cause of action against federal agents acting under
18 color of federal law," *Paeste v. Gov't of Guam*, 798 F.3d 1228, 1237 (9th Cir. 2015)
19 (quoting *Billings v. United States*, 57 F.3d 797, 801 (9th Cir. 1995)). Mr. Friend's
20 complaint does not allege that the Attorney General was acting pursuant to state law (*see*
21 *generally* Compl.) and so the court will liberally construe Mr. Friend's claim as "an
22 action under the authority of *Bivens* [*v. Six Unknown Named Agents of Federal Bureau of*

1 *Narcotics*, 403 U.S. 388 (1971)],” *Daly-Murphy v. Winston*, 837 F.2d 348, 355 (9th Cir.
2 1987). “[A] *Bivens* action is the federal analog to an action against state or local officials
3 under § 1983,” and is the proper vehicle for “seek[ing] to hold federal officers
4 individually liable for constitutional violations.” *Starr v. Baca*, 652 F.3d 1202, 1206 (9th
5 Cir. 2011).

6 Even if his claim is construed as a *Bivens* action, however, Mr. Friend fails to
7 state a claim because “a *Bivens* action can be maintained against a defendant in his or her
8 individual capacity only, and not in his or her official capacity.” *Daly-Murphy*, 837 F.2d
9 at 355. Mr. Friend’s complaint contains no allegation that the Attorney General acted in
10 an individual capacity to deprive Mr. Friend of his constitutional rights, nor is there
11 reason to construe the complaint in that manner. (*See generally* Compl.)

12 Ultimately, even if the court construes Mr. Friend’s complaint in a manner that
13 avoids these pleading deficiencies, the sparse allegations would still require dismissal.
14 Complaints need not include detailed factual allegations but must contain facts sufficient
15 to place the defendant on notice of what the claims are and the grounds upon which they
16 rest. *See Starr*, 652 F.3d at 1216 (requiring complaints to “contain sufficient allegations
17 of underlying facts to give fair notice and to enable the opposing party to defend itself
18 effectively”). Mr. Friend’s complaint fails to provide such notice. Indeed, it does not
19 allow either the court or Attorney General to discern—without significant speculation—
20 the nature of the constitutional rights Mr. Friend believes are at issue, whether Mr. Friend
21 has suffered any cognizable harm from his inability to access the enumerated documents,
22 or how the Attorney General’s conduct is connected to any such harm.

1 Accordingly, the court concludes that Mr. Friend's complaint fails to state a claim
2 against the Attorney General and dismisses his complaint pursuant to 28 U.S.C.
3 § 1915(e)(2)(B).

4 When a court dismisses a *pro se* plaintiff's complaint, it must give the plaintiff
5 leave to amend "[u]nless it is absolutely clear that no amendment can cure the defect[s]."
6 *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam). Thus, the court
7 grants Mr. Friend fourteen (14) days to file an amended complaint that properly addresses
8 the pleading deficiencies identified in this order. If Mr. Friend fails to timely comply
9 with this order or fails to file an amended complaint that corrects the identified
10 deficiencies, the court will dismiss his complaint without leave to amend.

11 IV. CONCLUSION

12 For the foregoing reasons, the court DISMISSES Mr. Friend's complaint
13 (Dkt. # 6) for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B) with leave to
14 amend within fourteen (14) days of the filing of this order.

15 Dated this 3rd day of September, 2021.

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18 JAMES L. ROBART
19 United States District Judge
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